

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Chester J. Massie, Jr.
H and Y Electrical Supply Company, Inc.
1714 Griffin Gate Road
Louisville, KY 40205

File No.: EB-04-DL-095
Citation: C20053250001
Sent via Certified Mail
Return Receipt Requested
and First Class U.S. Mail

CITATION

Released: October 14, 2004

By the Enforcement Bureau, Dallas Office:

1. This is an Official Citation issued pursuant to Section 503(b)(5) of the Communications Act of 1934, as amended ("Act"),¹ to Chester J. Massie, Jr. / H and Y Electrical Supply Company, Inc. for violation of Section 302(b) of the Act,² and Section 2.803(a)(1) of the Commission's Rules.³

2. On September 20, 2004, the FCC received a confidential report alleging that H and Y Electrical Supply Company was marketing non-certified "10-meter" CB transceivers.

3. An investigation by the FCC's Dallas Office revealed that Chester J. Massie, Jr. / H and Y Electrical Supply Company, Inc. is offering for sale in its 2004 / 2005 WHOLESale CATALOG the following non-certified Citizens Band transceivers:

<u>NAME</u>	<u>MODEL</u>	<u>PRICE</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
Connex	3300Patriot	\$189.95	"Band selector" "Band HI/LO"	19
Connex	3300R	\$164.95	"6 BANDS"	17
Connex	3300HP	\$184.95	"6 BANDS"	17
Connex	CX4400 HP	\$219.95	"8 BANDS"	16
Connex	CX4800 DXL/E	\$299.95	"12 BANDS 2400 CHANNELS"	16
Connex	Deer Hunter	\$119.95	"120 CHANNELS"	19
Connex	Coyote Hunter	\$149.95	"5 BANDS!"	19
Connex	Rebel	\$169.95	"band selector", "band hi/lo switch"	18
Connex	Rebel HP	\$189.95	"6 bands"	18
Galaxy	DX33HML	Call	"Channels: 240 AM, 240 FM"	7
Galaxy	DX44V	Call	"Channels: 361 AM, 361 FM"	7
Galaxy	DX-48T	Call	"8 bands!"	6
Galaxy	DX55V	Call	"Channels: 240 AM, 240 FM"	7
Galaxy	DX66V	Call	"Channels: 361 AM, 361 FM"	7, 8
Galaxy	DX73V	Call	"Channels: 361 AM, 361 FM"	7

¹ 47 U.S.C. § 503(b)(5)

² 47 U.S.C. § 302a(b)

³ 47 C.F.R. § 2.803(a)(1)

<u>NAME</u>	<u>MODEL</u>	<u>PRICE</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
Galaxy	77	Call	"Channels: 271 AM, 271 FM"	7
Galaxy	DX88HL	Call	"Band Switch"	8
Galaxy	DX-93T	Call	"8 bands!"	6
Galaxy	DX95T	Call	"8 BANDS!"	5
Galaxy	DX99V	Call	"Robot/VC Switch"	8
Galaxy	DX2517	Call	"Band Select Switch"	3
Galaxy	EXR-45mp	\$Call	"8 bands!"	11
Magnum	257	\$179.95		21
Magnum	357 DX	\$349.95		21
Magnum	3200	\$259.95	"240 CHANNELS"	4
Magnum	Delta Force	\$209.95	"Echo on/Off"	21
Magnum	M-1	\$199.95	"6 BANDS"	23
Magnum	Mini	\$ 69.95	"40, 120, OR 400 CHANNEL RADIO"	20
Magnum	Omega Force	\$259.05	"TALKBACK"	21
Magnum	S-3	\$199.95	"BAND SWITCH", "TALKBACK"	22
Magnum	S-9	\$319.95	"8 BANDS"	22
Maverick	A24	\$189.95	"BAND [SWITCH]", "ECHO ON/OFF"	20
Mirage	66	\$199.95	"BAND CONTROL", "ROBOT/VC"	23
Mirage	88	\$259.95	"Echo", "Band Switch"	23
Ranger	RCI-2950DX	Call		23
Ranger	RCI-2970	Call		23
Ranger	RCI-2980WX	Call		23
Ranger	RCI-2985DX	Call		23
Ranger	RCI-2995DX	Call		23
Ranger	RCI-6300F25	Call		23
Ranger	RCI-6300F150	Call		23
Ranger	RCI-6900F25	Call		23
Ranger	RCI-6900F150	Call		23
President	Lincoln	\$289.95		15
SuperStar	3900	\$159.95	"a-b-c-d-e-f bands"	13
SuperStar	3900GHP	\$159.95	"6 BANDS"	14
SuperStar	3900Plus	\$159.95	"6 BANDS"	12
SuperStar	Grant	\$189.95	"480 Channels"	14
Voyage	9000	\$199.95	"6 BANDS"	15

According to the Commission's records, these devices have not received an FCC equipment authorization which is required for Citizens Band transmitters marketed in the United States.

4. Additionally, investigation by the FCC's Dallas Office revealed that the Internet domain name hyelectronics.com is registered to H & Y Electronics Supply Company, 7504 Fegenbush Lane, Louisville, KY 40228-1571 with Chester Massie-Sr. listed as the administrative contact. Furthermore, on October 1, 2004, H&Y Electronics with a mailing address listed as P.O. Box 39322, Louisville, KY and telephone number listed as 1-502-231-2931, offered for sale through its Internet site www.hyelectronics.com, the following non-certified Citizens Band transceivers:

<u>NAME</u>	<u>MODEL</u>	<u>PRICE</u>	<u>DESCRIPTION</u>
Connex	4400 HP	\$226.55	"Echo Switch", "FOR EXPORT USE ONLY"
Connex	4800 DX LE	\$299.95	"2400 CHANNELS"
Connex	C-33PATHP	\$195.65	
Connex	C-48DXLE	\$308.95	
Connex	Coyote Hunter	\$154.45	"band selector", "FOR EXPORT USE ONLY"
Connex	CX-HPCF	\$195.65	"echo/off switch", "FOR EXPORT USE ONLY"
Galaxy	"88 refurb"	\$259.95	"ECHO"
Galaxy	DX-2517	\$419.95	"*for export use only"
Galaxy	DX-2547	\$264.95	"*For export use only"
Magnum	257	\$179.95	"AM/FM/LSB/USB"
Magnum	M-1	\$199.95	"Echo", "Top Gun Modulator"
Mirage	66	\$205.95	"MOBILE"
Mirage	88	\$238.95	"SAME FEATURES AS THE GALAXY 88"
Mirage	88	\$267.75	"Band Selector", "FOR EXPORT USE ONLY"
Mirage	99	\$288.35	"Robot/VC", "FOR EXPORT USE ONLY"
Ranger	2950 DX	\$253.54	
Ranger	2970 DX	\$411.99	
Super Star	121	\$144.15	"AM/FM Mobile", "FOR EXPORT USE ONLY"
SuperStar	3900	\$144.15	
SuperStar	3900 Gold	\$185.35	"FOR EXPORT USE ONLY"
SuperStar	Gold HP	\$169.90	
SuperStar	Grant	\$195.65	"FOR EXPORT USE ONLY"
SuperStar	SS-122	\$ 72.05	"10 meter radio for export use only"

According to the Commission's records, these devices have not received an FCC equipment authorization which is required for Citizens Band transmitters marketed in the United States.

5. Section 302(b) of the Act² provides "[n]o person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this section." Section 2.803(a)(1) of the Rules³ provides that "... no person shall sell or lease, or offer for sale or lease (including advertising for sale or lease), or import, ship or distribute for the purpose of selling or leasing or offering for sale or lease, any radio frequency device unless: (1) In the case of a device subject to certification, such device has been authorized by the Commission in accordance with the rules in this chapter and is properly identified and labeled" Chester J. Massie, Jr. / H and Y Electrical Supply Company, Inc. offer for sale of the above listed devices violates both sections.

6. Chester J. Massie, Jr. / H and Y Electrical Supply Company, Inc. markets these devices as amateur transceivers. The Commission has evaluated radio frequency devices similar to those listed in paragraphs 3 and 4, and concluded that the devices at issue are not only amateur radios but can easily be altered for use as Citizens Band devices as well. A CB transmitter is a transmitter that operates or is intended to operate at a station authorized for the CB service, and it must be certificated by the FCC prior to marketing or importation.⁴ The Commission has further concluded that these devices fall within the definition of a CB transmitter and therefore cannot legally be imported or marketed in the United States. *See* Response from the Commission's General Counsel to U.S. Customs Service dated May 17, 1999, 14 FCC Rcd 7797 (1999).

⁴ See 47 C.F.R. §§ 95.603(c) & 2.803

7. Additionally, dual use CB and amateur radios of the kind at issue here may not be certificated under the Commission's rules. Section 95.655(a) of the rules⁵ states: ". . . ([CB] Transmitters with frequency capability for the Amateur Radio Services . . . will not be certificated.)" *See also* FCC 88-256, 1988 WL 488084 (August 17, 1988). This clarification was added to explicitly foreclose the possibility of certification of dual use CB and amateur radios, *see id.*, and thereby deter use by CB operators of frequencies allocated for amateur radio use.

8. Furthermore, the Commission has revised Section 2.1204(a)(5) of its rules⁶ to prohibit all marketing and/or offering for sale in the United States of such devices even when the purchaser(s) had provided assurances that the transceivers are being bought solely for export. ALL DOMESTIC MARKETING OF SUCH DEVICES VIOLATES THE COMMUNICATIONS ACT OF 1934, AS AMENDED, AND THE COMMISSION'S RULES.

9. In addition to the marketing of the non-certified transceivers addressed above, Chester J. Massie, Jr. / H and Y Electrical Supply Company, Inc. is warned that Section 302(b) of the Act², and Section 2.815(c) of the Commission's Rules⁷ requires FCC Type Acceptance (or Certification) of External Radio Frequency Power Amplifiers (or amplifier kits) capable of operation on any frequency or frequencies below 144 MHz. Furthermore, Section 2.815(b) of the Commission's Rules⁸ prohibits the marketing of External Radio Frequency Power Amplifiers (or amplifier kits) capable of operation on any frequency or frequencies between 24 and 35 MHz. Non-certified HF external RF power amplifiers requiring certification include, but are not limited to, the following brands: Black Cat, Boomer, Cobra, Galaxy, Hornet, HLA, KL, KLV, Little Red Hooker, Magna Force, Messenger, Palomar, RM, RM / HLA, RM / KL, Texas Star, X-Force.

10. Subsequent violations of the Communications Act or of the Commission's Rules may subject the violator to substantial monetary forfeitures not to exceed \$11,000 for each such violation or each day of a continuing violation,⁹ seizure of equipment through *in rem* forfeiture action, and criminal sanctions including imprisonment.¹⁰

11. Chester J. Massie, Jr. / H and Y Electrical Supply Company, Inc. may request a personal interview at the closest FCC location to its place of business,¹¹ namely:

Federal Communications Commission
Park Ridge Office Center, Suite 306
1550 Northwest Highway
Park Ridge, Illinois 60068-1460

which can be contacted by telephone at XXX XXX-XXXX. They must schedule this interview to take place within 14 days of the date of this citation. Chester J. Massie, Jr. / H and Y Electrical Supply Company, Inc. may submit a written statement within 14 days of the date of this citation to the following address:

⁵ 47 C.F.R. § 95.655(a)

⁶ 47 C.F.R. § 2.1204(a)(5) revised effective February 28, 2000

⁷ 47 C.F.R. § 2.815(c)

⁸ 47 C.F.R. § 2.815(b)

⁹ *See* 47 C.F.R. § 1.80(b)(3)

¹⁰ *See* 47 U.S.C. §§ 401, 501, 503, 510

¹¹ *See* 47 U.S.C. § 503(b)(5)

Federal Communications Commission
9330 LBJ Freeway, Suite 1170
Dallas, Texas 75243-3470

which can be contacted by telephone at XXX XXX-XXXX. Any written statement should specify what actions have been taken to correct the violation outlined above. When corresponding with the Commission, case number EB-04-DL-095 and citation number C20053250001 should be referenced.

12. Any statement or information provided may be used by the Commission to determine if further enforcement action is required.¹² Any knowingly or willfully false statement made in reply to this notice is punishable by fine or imprisonment.¹³

FEDERAL COMMUNICATIONS COMMISSION

James D. Wells
District Director - Dallas Office

LRB

cc: Federal Communications Commission
Park Ridge Office Center, Suite 306
1550 Northwest Highway
Park Ridge, IL 60068-1460

Chester J. Massie, Jr.
H and Y Electrical Supply Company, Inc.
P.O. Box 39322
Louisville, KY 40233

¹² See Privacy Act of 1974, 5 U.S.C. §552a(e)(3)

¹³ See 18 U.S.C. §1001